

REMARKS

Applicants request favorable reconsideration of this application in view of the following remarks. Claims 11-20 were pending in the application and were rejected in the Office Action. Applicants have not amended the specification or the claims and, therefore, no new matter has been added.

Applicants appreciate the courtesy extended by the Examiner during the interview on January 7, 2004.

I. Rejection of Claims 11 and 14-20 under 35 U.S.C. § 103(a)

The Examiner rejected claims 11 and 14-20 as being obvious when considering U.S. Patent No. 5,553,803 ("Mitzkus") in view of U.S. Patent No. 6,250,720 ("Wier"). For the following reasons, Applicants continue to traverse this rejection.

During the interview, the comments set forth in the "Response to Arguments" section of the Office Action regarding the "seal between the bands 21 and walls 29 (col. 6, lines 52-60)" were withdrawn. However, the rejection was maintained. The Examiner contends that a seal must exist between the endwalls 51, 52 and the drive bands 21 in U.S. Patent No. 5,553,803 ("Mitzkus") for the device to function and, that the mere existence of a seal justifies a motivation to look to the teachings of U.S. Patent No. 6,250,720 ("Wier"). Wier teaches using a coating material (wax) to enhance a seal between a moving member (cable 11) and a non-moving member (sleeve section 43 of cylinder 5). *See* Wier at col. 6, lines 1-6.

The rejection should be withdrawn because there is no teaching or suggestion in the record that there is a problem with the seal disclosed in Mitzkus. Rather, the seal in Mitzkus is described as being tight enough to necessitate "vent openings 37 which lead to the surrounding atmosphere . . . at the concave side of the sealing walls 29 and prevent an excessive pressure build up in the partial chambers 23" on triggering of the additional drive." Col. 7, lines 23-27.

The only evidence of a problem with this type of seal is located in Applicants' own application which provides:

The performance of such a drive unit depends, among other things, on the amount of the pressure which builds up through the expanding gas inside the space which is formed by the plates and a loop formed by the drive band. The pressure building up is, however, reduced by gas which escapes via the interface drive band/plates.

(Application at p.1 lines 19-23).

However, any reliance the Applicants' disclosure amounts to an impermissible hindsight reconstruction. *See* M.P.E.P. § 2141 (subsection entitled: "Basic Considerations Which Apply to Obviousness Rejections" which provides: "When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: . . . (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention."), *see also* M.P.E.P. §§ 2141.01(III), 2142.

For at least this reason, Mitzkus and Wier can not properly be combined under 35 U.S.C. § 103(a) to reject independent claims 11 and 20, each of which recites that "the surface of each plate that faces the other plate is coated with a coating material configured to reduce the amount of gas that escapes through an interface between the edges of the drive band and the facing plate surfaces." Moreover, as claim 11 is allowable over Mitzkus and Wier, claims 14-19 which depend from claim 11, are also allowable, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 11 and 14-20 under 35 U.S.C. § 103(a)

II. Rejection of Claims 12 and 13 under 35 U.S.C. § 103(a)

The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being obvious when considering Mitzkus and Wier in view of U.S. Patent No. 2,889,163. For at least the following reasons, Applicants respectfully traverse this rejection.

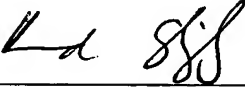
As previously mentioned, there is no evidence that teaches teach or suggests a problem with the seal between the drive bands 21 and the endwalls 51, 52 and, therefore, there is no motivation to combine Mitzkus and Wier. As a result, Wier can not be used to cure the deficiencies of Mitzkus with respect to claim 11. Stephens also fails to cure this deficiency. Accordingly, the combination of Mitzkus, Wier, and Stephens can not be used to reject claim 11, or any claim dependent thereon, under 35 U.S.C. § 103(a). As claims 12 and 13 depend from claim 11, each of these dependent claims is also allowable over the combination of Mitzkus, Wier, and Stephens, without regard to the other patentable limitations recited therein.

CONCLUSION

For the aforementioned reasons, claims 11-20 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite prosecution.

Respectfully submitted,

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By 

Customer Number: 22428

FOLEY & LARDNER
3000 K Street, N.W.
Suite 500
Washington, D.C. 20007-5143

Howard N. Shipley
Registration No. 39,370
Frederic T. Tenney
Registration No. 47,131
Attorneys for Applicants

Telephone: (202) 672-5582
Facsimile: (202) 672-5399

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